

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[P. R. Doc. 40-9; Filed, December 29, 1939;
4:18 p. m.]

PART 402—LOAN SERVICE

TAX AND INSURANCE ACCOUNT

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 402.14 is amended to read as follows:

§ 402.14 Arrangements may be made with home owners on an approved form for a Tax and Insurance Account for the purpose of accumulating funds for the payment of taxes, assessments, ground rents, and to provide funds for the renewal of existing insurance or the purchase of such insurance as the home owner is required to furnish upon the security property or the property sold.

In any case or class of cases the General Manager may waive the inclusion of any of the foregoing items in such Tax and Insurance Account, and in any given jurisdiction may require the inclusion of such other levies, charges or items as he may determine to be in the Corporation's interest.

The authority by this Section vested in the General Manager may also be exercised by the Regional Manager under procedure and limitations prescribed by the General Manager and the General Counsel.

(Effective date January 1, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647: 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on December 21, 1939.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[P. R. Doc. 40-10; Filed, December 29, 1939;
4:19 p. m.]

PART 402—LOAN SERVICE

TAX AND INSURANCE ACCOUNT

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 402.14 is amended to read as follows:

§ 402.14 In cases where the Loan Service Division considers it desirable, arrangements may be made with home owners on an approved form for a Tax and Insurance Account for the purpose of accumulating funds for the payment of taxes, assessments, other levies or

charges, ground rents, and insurance premiums.

(Effective date November 1, 1939)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647: 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on October 23, 1939.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[P. R. Doc. 40-11; Filed, December 29, 1939;
4:19 p. m.]

[Administrative Order No. 2-214]

PART 402—LOAN SERVICE

ESTABLISHMENT OF ACCOUNTS; EXECUTION OF FORM 533; DISPOSITION OF ACCOUNT

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

Sections 402.14-1, 402.14-2 and 402.14-4 are amended to read as follows:

§ 402.14-1 In all cases other than extensions, arrangements for a Tax and Insurance Account for the payment of taxes, assessments, other levies or charges, ground rents, and insurance premiums shall be made by the execution by the home owner of Form 533 in quintuplicate. The establishment of a Tax and Insurance Account is mandatory in certain instances as indicated elsewhere in Part 402. The Regional Manager may also require the establishment of a Tax and Insurance Account in connection with the granting of partial releases, subordinations, waivers, substitutions of security, or consents for removal, improvements, alterations, transfers of title, or other similar matters requested by the home owners. It is in the interests of both the home owner and the Corporation to establish a Tax and Insurance Account whenever possible. These facilities should be made available to every home owner desiring such arrangements. In any case where a Form 533 is required and is executed by the home owner, the agreement contained in said form may, with the advice of the Regional Counsel, be superseded by provisions for a Tax and Insurance Account included in other instruments executed by the borrower.

§ 402.14-2 One copy of Form 533 should be left with the home owner. On the reverse side of the original and remaining copies, the Service Representative shall complete Block I. The completion of this Block shall be in conformity with the instructions contained in Article 213-9 for the completion of Block I of Form 193. In instances where no advances are recommended in Block II and the monthly accumulation in the Tax and Insurance Account will not be sufficient to provide for the payment of taxes, assessments, other levies or

charges, or ground rents as they become due, the home owner may make such initial payment to the Tax and Insurance Account as may be necessary to provide that adequate funds will be accumulated by tax paying time. The amount of such initial payment shall be indicated by the Service Representative in Block II. This amount shall be accrued as the first payment due in the Tax and Insurance Account.

In connection with the establishment of a Tax and Insurance Account it is important that the Service Representative explain to the home owner the monthly billing, showing the status of the loan account and the Tax and Insurance Account as well as the manner in which subsequent insurance will be placed. In cases involving an immediate advance, Form 532 shall be prepared. In cases within his authority, where the Tax and Insurance Agreement is accepted by the Control Supervisor, he shall complete Block III on the reverse side of the form. In cases beyond his authority the Control Supervisor shall forward the Form 533 with all other servicing reports to the Analysis and Review Section. If this section accepts the Form 533, they shall complete Block III. After acceptance, the Control Supervisor shall forward the original copy of Form 533 to the Regional Accountant, one copy to the Tax Section, one copy to the Insurance Section, and retain one copy in the correspondence file.

§ 402.14-4 In cases where a Tax and Insurance Account has been established and notice of transfer of the property, death of the home owner, or similar matters affecting the account are received, it is assumed that the present Tax and Insurance Account will continue in effect unless the Regional Manager, with the advice of the Regional Counsel, shall otherwise direct. Upon receipt of notice of foreclosure from the Regional Manager, the Regional Accountant will transfer any credit balance in the Tax and Insurance Account to the loan account. In cases where withdrawal from foreclosure is authorized, the Tax and Insurance Account will be established or reestablished as the case may be in accordance with Article 203-20.1.

(Effective date November 1, 1939)

(Above procedure promulgated by General Manager and General Counsel pursuant to authority vested in them by the Federal Home Loan Bank Board acting pursuant to Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647: 12 U.S.C. 1463 (a), (k)).

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[P. R. Doc. 40-12; Filed, December 29, 1939;
4:19 p. m.]

[Administrative Order No. 2-245]

PART 402—LOAN SERVICE

TAX AND INSURANCE ACCOUNT

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 402.14-1 is amended by the insertion of the following immediately after the first sentence thereof:

The Regional Manager may waive the inclusion of any of these items except insurance in cases where the home owner receives credit on taxes to be paid for services rendered or is entitled to abatement of taxes, or under similar circumstances where such requirement would cause a home owner to be deprived of any special rights with respect to the payment of taxes by entering into an agreement for a Tax and Insurance Account. In any case where the home owner objects to the inclusion of insurance in a Tax and Insurance agreement and the Regional Manager considers such objection valid he shall refer the case to the General Manager for decision.

(Effective date January 1, 1940)

(Above procedure promulgated by General Manager and General Counsel pursuant to authority vested in them by the Federal Home Loan Bank Board acting pursuant to Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k).)

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-13; Filed, December 29, 1939;
4:20 p. m.]

[Administrative Order No. 2-246]

PART 402—LOAN SERVICE

EXECUTION OF FORM 533

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

The first paragraph of Section 402.14-2 is amended to read as follows:

§ 402.14-2 One copy of Form 533 shall be left with the home owner. On the reverse side of the original and remaining copies the Service Representative shall complete Block I. The amount to be allocated to the Tax and Insurance Account for insurance must be that shown in Form 198 furnished by the Insurance Section. In order to compute the amount to be allocated monthly to the Tax and Insurance Account for taxes, assessments, ground rents and other levies, charges or items to be paid through the Tax and Insurance Account during the ensuing year the Service Representative shall complete Form 534 in triplicate, listing all such items. The amount entered in Block I of Form 533 for the payment of

these items must equal one-twelfth of the total shown on Form 534. All copies of Form 534 shall be sent to the Control Supervisor who will forward them to the Tax Section. The Tax Section shall carefully review the items listed in Form 534 and if they are found to be correct, shall file one copy in either the Tax Kardex or the correspondence file and return one copy to the Control Supervisor, who will transmit it to the home owner and forward the remaining copy to the Regional Accountant. In instances where no advances are recommended in Block II and the monthly accumulation in the Tax and Insurance Account will not be sufficient to provide for the payment of taxes, assessments, and ground rents, if any, and such other levies, charges and items as the Regional Manager may determine, as they become due, the home owner may make such initial payment to the Tax and Insurance Account as may be necessary to provide that adequate funds will be accumulated by tax-paying time. The amount of such initial payment shall be indicated by the Service Representative in Block I. This amount shall be accrued as the first payment due in the Tax and Insurance Account.

(Effective date January 1, 1940)

(Above procedure promulgated by General Manager and General Counsel pursuant to authority vested in them by the Federal Home Loan Bank Board acting pursuant to Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k).)

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-14; Filed, December 29, 1939;
4:20 p. m.]

[Administrative Order No. 2-247]

PART 402—LOAN SERVICE

WHERE MISCELLANEOUS CREDITS APPLIED TO REDUCE UNMATURED PRINCIPAL INDEBTEDNESS

Amending Part 402 of Chapter IV, Title 24 of the Code of Federal Regulations.

The second paragraph of Section 402.15-2 is amended to read as follows:

Where miscellaneous credits are so applied as to materially reduce the unmatured principal indebtedness, the home owner may request and the Regional Manager may direct a reamortization of the loan balance within the remaining life of the loan or sales instrument, or the home owner may apply for an extension if the time required for repayment of the loan balance is greater than the remaining life of the present loan or sales instruments, subject to the provisions of Section 213.

(Effective date January 1, 1940)

(Above procedure promulgated by General Manager and General Counsel pursuant to authority vested in them by the Federal Home Loan Bank Board acting pursuant to Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k).)

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-15; Filed, December 29, 1939;
4:20 p. m.]

PART 404—APPRAISAL

ORGANIZATION OF APPRAISAL SECTION

Amending Part 404 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 404.00 is amended to read as follows:

§ 404.00 The Appraisal Section of the Appraisal and Reconditioning Division shall function under the administrative direction and supervision of the General Manager and be under the immediate charge of a Deputy General Manager, who shall establish adequate Washington and Field organization for the proper discharge of the duties and responsibilities of the Section, and who shall have all necessary authority to carry out the rules and regulations of the Corporation relating to matters within the jurisdiction of the Section, and who shall establish qualification standards for all salaried and fee personnel of the Appraisal Section who perform appraisal functions of a technical nature and shall establish and approve fees, and cause to be provided such qualified and competent salaried, W. A. E., and fee personnel as may be necessary.

(Effective date January 1, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k).)

Adopted by the Federal Home Loan Bank Board on December 22, 1939.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-16; Filed, December 29, 1939;
4:20 p. m.]

PART 406—LEGAL

EXECUTION OF EXTENSION AGREEMENTS

Amending Part 406 of Chapter IV, Title 24 of the Code of Federal Regulations.

A new section is added, to be designated as Section 406.15, reading as follows:

§ 406.15 Extension agreements shall be executed under the control and general supervision of the General Counsel, who is authorized to issue all necessary instructions relating thereto and to permit or approve such deviations in and from approved forms or procedure promulgated hereunder as he may deem proper with respect to specific cases and/or particular localities. Other Departments, Divisions and Sections shall, when requested, furnish to the Legal Department any information available in connection with the preparation and execution of extension agreements, and shall render any reasonable assistance to the Legal Department in securing their execution, acknowledgment, attestation or recording.

The Legal Department shall prepare, obtain the execution of, and have recorded where necessary, all extension agreements on the basis of information furnished by the Regional Manager.

The priority of the Corporation's lien securing payment of the mortgage debt and performance of the mortgage covenants must be preserved.

The Corporation will assume all reasonable risk as to the priority of its lien securing payment of additional advances and performance of additional obligations provided for in the extension agreements, with the view to minimizing the expense to the home owner of such extensions.

No costs of recording extension agreements shall be incurred in cases where the sole purpose of such recording is to bind the home owner's successors in title to perform the additional obligations imposed by the extension agreement.

Title search, recording and/or subordination of intervening liens shall not be required except where the General Counsel determines that such course is necessary to protect the priority of the Corporation's lien securing payment of the existing mortgage debt and performance of the mortgage covenants.

Neither the application nor the extension agreement need be signed by former home owners who are not in title. Regardless of the number of persons in title to the property, the signature of the applicant may be that of any one person in title. Whether or not the spouse of the applicant is a co-maker, either with or without title interest, the signature of such spouse is not required on the application. Other co-makers and endorsers of the present home owner shall consent in writing to the granting of the extension as applied for unless the Regional Manager determines that by reason of the good credit risk of the present owner, the high security value of the property, or other reason, the signature of any such endorser or co-maker may be waived without detriment to the Corporation's interests, or that to require such signatures would work a hardship on the home owner disproportionate to the benefits to be derived therefrom, or unless the Regional Counsel advises that the granting

of the extension will not release their liability.

The extension agreements shall be executed by all of the present owners of the property as disclosed by the title search, or if no title search is made, as named in the statement of ownership and/or the application; unless the General Counsel determines that execution by any or all of such owners is not necessary to preserve the priority of the Corporation's lien securing payment of the mortgage debt and performance of the mortgage covenants, and waives execution by any or all such owners.

The General Counsel, or in individual cases the Regional Counsel, may require the execution of the extension agreement, or the consent in writing to the granting of the extension, by any person whose execution or consent is not specifically required by this section when, in his opinion, such execution or consent should be required in order to preserve the priority of the Corporation's lien or other rights, or the liability of any co-maker or endorser of the present owner where such liability has not been expressly waived.

Salaried personnel is to be used where practicable in the preparation of extension agreements. Approved fee attorneys or title companies are to be used where practicable in the closing of extension agreements, provided that salaried personnel of the Corporation or any other available facilities may in the discretion of the General Counsel be utilized in particular jurisdictions, or may in the discretion of the General Counsel or the Regional Counsel be utilized in individual cases. Unless otherwise authorized or approved by the General Counsel, the fee to be paid for services rendered in the closing of extension agreements should not exceed \$2.00 per case except in those jurisdictions where title search or other additional services are required. All legal fees in connection with the closing of extensions shall be incurred and paid in accordance with the provisions of this chapter.

When requested by the General Counsel, the Loan Service Division will furnish to the Legal Department with the application, on a duly approved form, a statement of ownership. On applications submitted to the Regional Office after the effective date hereof, said statement of ownership shall be signed by at least one person who is an owner. It will be the duty of the Loan Service Division to endorse on such statement the names of any additional persons whom it believes to be the present owners of the property. The Legal Department may accept such statement of ownership in lieu of title search as to ownership, except in those jurisdictions where the General Counsel determines that title search is necessary in the light of the policy hereinabove outlined.

Ordinarily legal or other expenses incidental to the closing of extensions shall be advanced by the Corporation and billed as advances for taxes resulting

from insufficiency of the Tax and Insurance Account are billed under the provisions of Chapter II. Collections are not to be made for such items at closing except where the closing is made in an office of the Corporation.

The authority herein granted to the General Counsel may be exercised also by Regional Counsel under procedure and limitations prescribed by the General Counsel with the approval of the General Manager.

(Effective date January 1, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on December 21, 1939.

[SEAL]

J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-17; Filed, December 29, 1939;
4:21 p. m.]

[Administrative Order No. 600]

PART 406—LEGAL

INSTRUMENTS REQUIRED

Amending Part 406 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 406.15-3 is amended to read as follows:

§ 406.15-3 Where the extension is closed by a fee attorney, title company, or salaried attorney of the Legal Department, the closer shall render an appropriate certificate, in form prescribed by the Regional Counsel, as to the closing of the transaction, and the recording of instruments where recording is required. Where salaried personnel of other divisions or departments of the Corporation or other available facilities are used in securing the execution, acknowledgment or attestation of instruments, such instruments shall be examined by the Regional, State or Division Counsel, or by a salaried attorney of the Legal Department, and counsel examining such instruments shall render an appropriate certificate as herein prescribed.

While a copy of the extension agreement may be given to the home owner, no copy or duplicate which is executed by the Corporation shall be given to the home owner unless required by the laws of the particular state.

Where the extension is completed through channels other than the Regional Office, the file, with the appropriate certificate, shall be returned to the Regional Counsel. If the recording of the original instruments by which the extension is closed delays the transmittal to the Regional Counsel, then a certificate of their filing for record, the closing certificate, and any other papers relating thereto shall be transmitted to the Regional Counsel as a first shipment, to be followed as soon as possible by the original instrument and any other

papers not included in the first shipment.

(Effective date January 1, 1940)

(Above procedure promulgated by General Manager and General Counsel pursuant to authority vested in them by the Federal Home Loan Bank Board acting pursuant to Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k)).

Promulgated by General Manager and General Counsel of Home Owners' Loan Corporation.

[SEAL] J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-18; Filed, December 29, 1939;
4:21 p. m.]

PART 408—ACCOUNTING

APPLICATION OF REMITTANCES; MISCELLANEOUS CREDITS

Amending Part 408 of Chapter IV, Title 24 of the Code of Federal Regulations.

Sections 408.00 (g) and 408.00 (l) are amended to read as follows:

(g) Remittances received from a home owner for application to his account shall be posted to the home owner's tax and insurance account up to the amount of the accrued and unpaid balance thereon before crediting any portion of such remittance to the related loan or vendee account. Remittances applied to the loan or vendee account shall be distributed first to interest and second to principal, without segregation on the individual ledger sheets between the primary obligation, reconditioning loan or advance elements of the consolidated balance of either interest or principal. When requested by the Legal Department, the Accounting Section shall prepare statements of account showing the elements of the consolidated account and a segregation of the amounts posted to the consolidated interest and consolidated principal balances applicable to each such element, unless, under direction of Regional Counsel, the statement is required to reflect a different segregation of credits or application of payments.

(l) Funds received by the Corporation from partial releases, grants of easements and flowage rights, insurance losses, mineral deeds, transactions affecting oil, gas or mineral interests, sales of timber, condemnation awards under decree or judgment of a court or by agreement, substitution of security, additional security, other transactions which otherwise reduce or diminish the security held by the Corporation or the property sold by it, and any other credits to borrowers' or vendees' accounts other than repayments, are defined as "miscellaneous credits", and the net amount thereof shall be applied to the appropriate account (interest, principal or other sums

owing to the Corporation) in such manner, consistent with law and the provisions of the loan or sales instrument or other agreement, as the General Manager, with the advice of the General Counsel, shall direct.

(Effective date November 2, 1939)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on November 2, 1939.

[SEAL] J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-19; Filed, December 29, 1939;
4:21 p. m.]

PART 408—ACCOUNTING

REAMORTIZATION

Amending Part 408 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 408.00 (h) is amended, by the addition of the following paragraph:

The General Manager, in connection with any curtailment of principal of a home owner's account and with the advice of the General Counsel, is authorized to direct the reamortization of such account within the remaining life of the loan or sales instrument. The authority granted herein may also be exercised by the Regional Manager, with the advice of Regional Counsel, under procedure and limitations prescribed by the General Manager with the approval of the General Counsel.

(Effective date January 1, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on December 21, 1939.

[SEAL] J. FRANCIS MOORE,
Acting Secretary.

[F. R. Doc. 40-20; Filed December 29, 1939;
4:21 p. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[Regulations 104]

REGULATIONS RELATING TO CONSOLIDATED RETURNS OF AFFILIATED RAILROAD CORPORATIONS AND PAN-AMERICAN TRADE CORPORATIONS*

*Sections 23.0 to 23.44 issued under the authority contained in section 141 of the Internal Revenue Code (53 Stat. 58), as amended by section 210 of the Revenue Act of 1939 (Public. No. 155, 76th Cong., 1st sess.), and section 152 of the Internal Revenue Code, as added by section 225 of the said Revenue Act of 1939.

APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1938, IN THE CASE OF RAILROAD CORPORATIONS AND AFTER DECEMBER 31, 1939, IN THE CASE OF PAN-AMERICAN TRADE CORPORATIONS

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SUPPLEMENT D—RETURNS AND PAYMENT OF TAX

[Supplementary to Subchapter B, Part V]

SEC. 141. CONSOLIDATED RETURNS OF RAILROAD CORPORATIONS. (INTERNAL REVENUE CODE)

(a) *Privilege to file consolidated returns.* An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936, 49 Stat. 1698, insofar as not inconsistent with this chapter) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) *Regulations.* The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

(c) *Computation and payment of tax.* In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this chapter) prescribed prior to the date on which such return is made.

(d) *Definition of "affiliated group."* As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this subsection (except in paragraph (3)) the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) *Foreign corporations.* A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(f) *China Trade Act corporations.* A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(g) *Corporations deriving income from possessions of United States.* For the purposes of this section a corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

(h) *Subsidiary formed to comply with foreign law.* In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

(i) *Suspension of running of statute of limitations.* If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(j) *Receivership cases.* If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be entitled to the benefits of section 13 (e), the affiliated group shall be entitled to the benefits of such subsection. In all other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

(k) *Allocation of income and deductions.* For allocation of income and deductions of related trades or businesses, see section 45.

SEC. 210. TECHNICAL AMENDMENTS MADE NECESSARY BY CHANGE IN CORPORATION TAX. (REVENUE ACT OF 1939.)

(b) Section 141 (j) of the Internal Revenue Code (relating to affiliated corporations in bankruptcy or receivership) shall not apply with respect to a taxable year beginning after December 31, 1939.

SEC. 225. PAN-AMERICAN TRADE CORPORATIONS. (REVENUE ACT OF 1939.) The Internal Revenue Code is amended by inserting after section 151 the following new section:

"SEC. 152. PAN-AMERICAN TRADE CORPORATIONS. If a domestic corporation engaged in the active conduct of a trade or business within the United States (hereinafter referred to as the 'parent corporation') owns directly 100 per centum of the capital stock of one or more domestic corporations each of which is engaged solely in the active conduct of a trade or business in Central or South America (hereinafter referred to as a Pan-American trade corporation), such corporations (including the 'parent corporation') shall be deemed to be an affiliated group of corporations within the meaning of section 141 of this chapter, provided that the following conditions are satisfied:

"(1) At least 80 per centum of the gross income for the taxable year of the parent corporation is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

"(2) At least 90 per centum of the gross income for the taxable year of each of the Pan-American trade corporations is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

"(3) No part of the gross income for the taxable year of any of the Pan-American

trade corporations is derived from sources within the United States."

SEC. 229. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1939.) Except the amendments made by sections 211, 213, 214, 215, 217, 219, 220, 221, 222, 223, 226, 227, and 228, the amendments made by this title to the Internal Revenue Code shall be applicable only with respect to taxable years beginning after December 31, 1939.

§ 23.0 *Introductory.* These regulations, authorized by sections 141 (b) and 152 of the Internal Revenue Code, as amended, are prescribed as a supplement to the income tax regulations applicable generally under the Code. They are applicable, in the case of railroad corporations, to all taxable years beginning after December 31, 1938, and in the case of Pan-American trade corporations, to all taxable years beginning after December 31, 1939, except where the return for any such year has been made prior to the prescribing of these regulations, in which case Regulations 97, prescribed under section 141 (b) of the Revenue Act of 1936, are applicable in so far as not inconsistent with the provisions of the Code.

The several sections of these regulations have been given numbers corresponding respectively to the article numbers of prior consolidated returns regulations but, in accordance with the rules of the Federal Register, preceded by the Code number 23.

The following regulations are hereby prescribed pursuant to the authority of sections 141 (b) and 152 of the Internal Revenue Code, as amended:¹

GENERAL PROVISIONS

§ 23.1 *Privilege of making consolidated returns.* (a) Sections 141 and 152 give to the corporations of an affiliated group the privilege of making a consolidated return for the taxable year in lieu of separate returns. This privilege, however, is given upon the condition that all

corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to these regulations, and any amendments thereof duly prescribed prior to the making of the return and applicable to such year; and the making of the consolidated return is considered as such consent.

(b) The tax liability of the members of the affiliated group for such year will be determined in accordance with such regulations and without regard to any amendment thereto prescribed subsequent to the making of such return.*

§ 23.2 *Definitions.*—(a) *Code.* The term "Code" means the Internal Revenue Code, as amended, and the sections of statutory law referred to in these regulations, unless otherwise stated, are sections of that Code.

(b) *Affiliated group.* The term "affiliated group" includes the common parent corporation and every other corporation for the period during which such corporation is a member of the affiliated group within the meaning of section 141 or section 152; but does not include any corporation which under section 141 or section 152 cannot be included in a consolidated return. (See sections 141 and 152 of the Code and sections 19.141-1 to 19.141-4 and 19.152-1 to 19.152-2 of Regulations 103.)

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of Canada or of Mexico and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for income tax purposes as a domestic corporation. The option to treat such foreign corporation as a domestic corporation so

that it may be included in a consolidated return must be exercised at the time of making the consolidated return.

In the determination of the corporations properly to be included within the affiliated group as "Pan-American trade corporations," the term "Central or South America" as used in section 152 of the Code as amended by section 225 of the Revenue Act of 1939 shall be considered as embracing the territories of British Honduras, Guatemala, Honduras, Salvador, Nicaragua, Costa Rica, Panama, the Panama Canal Zone, Colombia, Venezuela, British Guiana, Dutch Guiana, French, Guiana, Ecuador, Peru, Brazil, Bolivia, Chili, Argentina, Paraguay, and Uruguay.

An affiliated group of corporations, within the meaning of sections 141 and 152, is formed at the time that the common parent corporation becomes the owner directly of at least 95 percent, in the case of railroad corporations, and 100 percent in the case of Pan-American trade corporations, of the stock (as defined by section 141 (d)) of another corporation. A corporation becomes a member of a railroad affiliated group at the time that one or more members of the group become the owners directly of at least 95 percent of its stock. A corporation becomes a member of a Pan-American affiliated group at the time that the common parent corporation becomes the owner directly of 100 percent of its stock. A corporation ceases to be a member of an affiliated group when the members of the group, or the parent corporation, ceases to own directly at least 95 percent, or 100 percent, as the case may be, of its stock.

(c) *Consolidated return period.* The term "consolidated return period" means the taxable year 1929, or any subsequent taxable year, for which a consolidated return is made or is required, including the period during which a subsidiary corporation is engaged in distributing its assets in liquidation.

(d) *Subsidiary.* The term "subsidiary" means a corporation (other than the common parent corporation) which is a member of the affiliated group during any part of the consolidated return period.

(e) *Tax.* The term "tax" includes any interest, penalty, additional amount, or addition to the tax, payable in respect thereof.

(f) *Terms defined in Internal Revenue Code, as amended.* Terms which are defined in the Code, as amended, shall, when used in these regulations, have the meaning assigned to them by the Code, as amended, unless specifically otherwise defined. (See, for example, "adjusted net income," section 13; "normal-tax net income," section 13 as amended by section 201 of the Revenue Act of 1939; "special class net income," section 14 prior to its amendment by section 201 of the Revenue Act of 1939; "net income," section 21; "gross income,"

* The report of the Committee on Ways and Means (Rept. No. 1860, 75th Cong., 3d sess., p. 44) accompanying the revenue bill of 1938 (the pertinent provisions of which were reenacted without change in substance in the Internal Revenue Code) contains the following statement:

"Among the matters to be detailed in regulations which the Commissioner is expected to prescribe under the provisions of subsection (b) of this section are (a) the treatment of inter-company dividend distributions, (b) definitions of the 'net income,' the 'adjusted net income,' and the 'special class net income,' of the affiliated group, and (c) the computation of the 'net operating loss,' the 'basic surtax credit,' the 'dividend carry-over,' the 'dividends paid credit,' and the 'capital gains and losses,' insofar as these several factors may pertain to the case of an affiliated group."

With respect to the corresponding section of the Revenue Act of 1928, the report of the Committee on Finance (S. Rept. No. 960, 70th Cong., 1st sess., p. 15) accompanying the revenue bill of 1928 contains the following statement (a similar statement being contained also in the statement of the managers on the part of the House, accompanying the conference report upon the bill, see H. Rept. No. 1882, 70th Cong., 1st sess., pp. 16-17):

"Among the regulations which it is expected that the Commissioner will prescribe

are: (1) The extent to which gain or loss shall be recognized upon the sale by a member of the affiliated group of stock issued by any other member of the affiliated group or upon the dissolution (whether partial or complete) of a member of the group; (2) the basis of property (including property included in an inventory) acquired, during the period of affiliation, by a member of the affiliated group, including the basis of such property after such period of affiliation; (3) the extent to which and the manner in which net losses sustained by a corporation before it became a member of the group shall be deducted in the consolidated return; and the extent to which and the manner in which net losses sustained during the period for which the consolidated return is filed shall be deducted in any taxable year after the affiliation is terminated in whole or in part; (4) the extent to which and the manner in which gain or loss is to be recognized, upon the withdrawal of one or more corporations from the group, by reason of transactions occurring during the period of affiliation; and (5) that the corporation filing the consolidated return must designate one of their members as the agent for the group, in order that all notices may be mailed to the agent, deficiencies collected, refunds made, interest computed, and proceedings before the Board of Tax Appeals conducted as though the agent were the taxpayer."

section 22; "taxable year" and "fiscal year," section 48; "deficiency," section 271; and the terms defined in section 3797, particularly the terms "person," "stock," and "corporation.") *

§ 23.3 *Applicability of other provisions of law.* Any matter in the determination of which the provisions of these regulations are not applicable shall be determined in accordance with the provisions of the Code or other law applicable thereto.*

ADMINISTRATIVE PROVISIONS

§ 23.10 *Exercise of privilege.*—(a) *When privilege must be exercised.* (1) The privilege of making a consolidated return under these regulations for any taxable year of an affiliated group must be exercised at the time of making the return of the common parent corporation for such year. Under no circumstances can such privilege be exercised at any time thereafter. The filing of separate returns for a taxable year does not constitute an election binding upon the corporations in subsequent years. If the privilege is exercised at the time of making the return, separate returns cannot thereafter be made for such year. (See, however, section 23.18, relating to the improper inclusion in the consolidated return of the income of a corporation.)

(2) If a consolidated return for a taxable year beginning after December 31, 1938, was made after the enactment of the Internal Revenue Code, approved February 10, 1939, but prior to the prescribing of these regulations, the privilege of making a consolidated return for such year will be considered as having been exercised at the time of the making of such return, and the affiliated group will be considered as having consented to all of the provisions of Regulations 97 insofar as not inconsistent with the Code, as amended. Under no circumstances can separate returns be subsequently made for such taxable year.

(3) If a consolidated return for a taxable year beginning after December 31, 1938, was made prior to the amendment of the Internal Revenue Code by the Revenue Act of 1939, the privilege of making a consolidated return for such year will not be considered to have been exercised at that time but must be exercised at the time of making the return of the common parent corporation for such taxable year under the Code.

(b) *Effect of tentative returns.* In no case will the privilege under paragraph (a) be considered as exercised at the time of making a so-called "tentative return" (made, for example, in order to obtain an extension of time for making the return required by law). However, if any such tentative return is made upon the basis of a consolidated return or a separate return, the return required by law must be made upon the same basis, unless upon the making of the return required by law (either a

separate return or a consolidated return, as the case may be) the payments theretofore made and to be made are adjusted in a manner satisfactory to the Commissioner.*

§ 23.11 *Consolidated returns for subsequent years.*—(a) *Consolidated returns required for subsequent years.* If a consolidated return is made under these regulations for any taxable year, a consolidated return must be made for each subsequent taxable year during which the affiliated group remains in existence unless (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (2) one or more provisions of these regulations, which have previously been consented to, have been amended, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change.

(b) *Effect of separate returns when consolidated return required.* If the making of a consolidated return is required for any taxable year, the tax liability of the members of the affiliated group shall be computed in the same manner as if a consolidated return had been made, even though separate returns are made; amounts assessed upon the basis of separate returns shall be considered as having been assessed upon the basis of a consolidated return; and amounts paid upon the basis of separate returns shall be considered as having been paid by the common parent corporation. In such cases the making of separate returns shall not be considered as the making of a return for the purpose of computing any period of limitation or any deficiency. If a consolidated return for such taxable year is thereafter made, such return shall for the purpose of computing periods of limitation and any deficiency be considered as the return for such year.

(c) *When affiliated group remains in existence.* For the purposes of these regulations, an affiliated group shall be considered as remaining in existence if the common parent corporation remains as a common parent and at least one subsidiary remains affiliated with it, whether or not such subsidiary was a member of the group at the time the group was formed and whether or not one or more corporations have become subsidiaries or have ceased to be subsidiaries at any time after the group was formed.

(d) *When affiliated group terminates.* For the purposes of these regulations, an affiliated group shall be considered as terminated if the common parent corporation ceases to be the common parent or if there is no subsidiary affiliated with it.*

§ 23.12 *Making consolidated return and filing other forms.*—(a) *Consolidated return made by common parent corpora-*

tion. A consolidated return shall be made on Form 1120 by the common parent corporation for the affiliated group. Such return shall be filed at the time and in the office of the collector of the district prescribed for the filing of a separate return by such corporation.

(b) *Authorizations and consents filed by subsidiaries.* Each subsidiary must prepare duplicate originals of Form 1122, consenting to these regulations and authorizing the common parent corporation to make a consolidated return on its behalf for the taxable year and authorizing the common parent (or, in the event of its failure, the Commissioner or the collector) to make a consolidated return on its behalf (as long as it remains a member of the affiliated group), for each year thereafter for which, under section 23.11 (a), the making of a consolidated return is required. One of such forms as prepared by each subsidiary shall be attached to the consolidated return, as a part thereof; and the other shall be filed, at or before the time the consolidated return is filed, in the office of the collector for the district prescribed for the filing of a separate return by such subsidiary. No such consent can be withdrawn or revoked at any time after the consolidated return is filed.

(c) *Affiliations schedule filed by common parent corporation.* The common parent corporation shall prepare Form 851 (Affiliations Schedule), which shall be attached to the consolidated return, as a part thereof.

(d) *Persons qualified to swear to returns and forms.* Each return or form required to be made or prepared by a corporation must be sworn to by the persons authorized under section 52 to swear to returns of separate corporations. In cases where receivers or trustees in bankruptcy are operating the property or business of corporations, each return or form required to be made or prepared by such corporation must be executed by the receiver or trustee, as the case may be, pursuant to an order or instructions of the court, and be accompanied by a copy of such order or instructions.

(e) *Signatures in case subsidiary has left affiliated group.* Since Form 1122 is required even though, during the taxable year of the common parent corporation, the subsidiary (because of a dissolution or sale of stock, or otherwise) has ceased to be a member of the affiliated group, it may be advisable for the common parent to obtain the proper signatures to the form prior to the time the subsidiary ceases to be a member of the group.*

§ 23.13 *Change in affiliated group during taxable year.* (This section has no bearing upon the question whether a consolidated return may or must be made, but relates only to the effect of changes in the affiliated group during the taxable year.)

(a) *General rule.* Except as hereinafter provided, a consolidated return must include the income of the common

parent corporation and of each subsidiary for the entire taxable year.

(b) *Formation of affiliated group after beginning of year.* If an affiliated group is formed after the beginning of the taxable year of the corporation which becomes the common parent corporation, the consolidated return must include the income of the common parent for its entire taxable year (excluding any portion of such year during which its income is included in the consolidated return of another affiliated group) and the income of each subsidiary from the time it became a member of the affiliated group.

(c) *Complete termination of affiliated group prior to close of taxable year.* If an affiliated group is terminated prior to the close of the taxable year of the group, the consolidated return must include the income of the common parent corporation for its entire taxable year (excluding any portion of such year during which its income is included in the consolidated return of another affiliated group) and of each subsidiary for the period prior to the termination. (See paragraphs (c) and (d) of section 23.11, in determining whether the group has terminated.)

(d) *Addition to affiliated group of a subsidiary during year.* If a corporation becomes a member of the affiliated group during the taxable year of the group, the consolidated return must include its income from the time when it became a member of the group.

(e) *Elimination from affiliated group of a subsidiary during year.* If a subsidiary ceases to be a member of the affiliated group during the taxable year of the group, the consolidated return must include its income for the period during which it was a member of the group.

(f) *Period of 30 days or less may be disregarded.* A subsidiary may at its option be considered as having been a member of the affiliated group during the entire taxable year of the group (or during the entire period of the existence of the subsidiary, whichever is shorter) if the period during which it was not a member of such group does not exceed 30 days. If a corporation has been a member of the affiliated group for a period of less than 31 days during the taxable year of the group, it may at its option be considered as not having been a member of the group during the taxable year. An option under this paragraph must be exercised at or before the time when the consolidated return is made.

(g) *Separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation), becomes a member of an affiliated group, its income for the portion of such taxable year not included in the consolidated return of such group must be included in a separate return (or, if a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return). If a corporation ceases to be a member

of the affiliated group during the taxable year of the group, its income for the period after the time when it ceased to be a member of the group must be included in a separate return (or, if it becomes a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return).

(h) *Time for making separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation), becomes a member of an affiliated group, the separate return required for the portion of such taxable year during which it was not a member of the group must be made on or before the 15th day of the third month following the close of its taxable year (determined without regard to affiliation). For example, Corporation P, reporting its income on a calendar year basis, acquires on January 1, 1939, all the stock of Corporation S, which reports its income on a fiscal year basis ending March 31. P and S elect to make a consolidated return for the calendar year 1939. The separate return of S for the taxable period April 1, 1938, to December 31, 1938, should be made on or before June 15, 1939.*

§ 23.14 *Accounting period of an affiliated group.* The taxable year of the common parent corporation shall be considered as the taxable year of an affiliated group which makes a consolidated return, and the consolidated net income must be computed on the basis of the taxable year of the common parent.*

§ 23.15 *Liability for Tax—(a) Several liability of members of affiliated group.* Except as provided in paragraph (b), the common parent corporation and each subsidiary, a member of the affiliated group during any part of a consolidated return period, shall be severally liable for the tax (including any deficiency in respect thereof) computed upon the consolidated net income of the group.

(b) *Liability of subsidiary after withdrawal.* If a subsidiary has ceased to be a member of the affiliated group, its liability under paragraph (a) shall remain unchanged, except that if such cessation occurred prior to the date upon which any deficiency is assessed and resulted from a bona fide sale of stock for fair value, the Commissioner may, if he believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion thereof allocable to it upon the bases of income used in the computations respectively of the normal tax and any surtaxes included in such deficiency.

(c) *Effect of intercompany agreements.* Any agreement entered into by one or more members of the affiliated group with any other members of such group or with any other person shall in no case have the effect of reducing the liability prescribed under this section.

(d) *Liability of transferee not affected.* This section shall not be considered as extinguishing or diminishing any liability, at law or in equity, of a transferee of property of a taxpayer, including any liability under any provision of law, State or Federal, relating to liabilities pursuant to corporate dissolution or transfer or distribution of assets, whether or not in connection with a merger or consolidation.*

§ 23.16 *Common parent corporation agent for subsidiaries—(a) Scope of agency of common parent corporation.* Except as provided in paragraphs (b) and (c) of this section—

The common parent corporation shall be for all purposes, in respect of the tax for the taxable year for which a consolidated return is made or is required, the sole agent, duly authorized to act in its own name in all matters relating to such tax, for each corporation which during any part of such year was a member of the affiliated group. The corporations, other than the common parent, shall not have authority to act for or to represent themselves in any such matter. For example, all correspondence will be carried on directly with the common parent; notices of deficiencies will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each such corporation; the common parent will file petitions and conduct proceedings before the Board of Tax Appeals, and any such petition shall be considered as having also been filed by each such corporation; the common parent will file claims for refund or credit; refunds will be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any such corporation; and the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each such corporation. Notwithstanding the provisions of this paragraph, however, any notice of deficiency, in respect of the tax for a consolidated return period, will name each corporation which was a member of the affiliated group during any part of such period, and any assessment (whether of the original tax or of a deficiency) will be made in the name of each such corporation (but a failure to include the name of any such corporation will not affect the validity of the notice of deficiency or the assessment as to the other corporations); and any notice or demand for payment, any distraint (or warrant in respect thereof), any levy (or notice in respect thereof), any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made. The provisions of this paragraph shall

apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Notwithstanding the provisions of this paragraph, the Commissioner may, if he deems it advisable, deal directly with any member of the group in respect of its liability, in which event such member shall have full authority to act for itself.

(b) *Effect of withdrawal of subsidiary.* For the purpose of the assertion, assessment, and collection of any deficiency, and of a credit or refund of any amount paid by a former subsidiary as a deficiency determined under section 23.15 (b), but for no other purpose, the agency of the common parent corporation in respect of any subsidiary which has ceased to be a member of the affiliated group shall be terminated upon the expiration of 30 days (or prior thereto if the Commissioner consents), from the date upon which such subsidiary files written notice with the Commissioner that it has ceased to be a member of the affiliated group and that it is terminating such agency. For example, if a subsidiary has ceased to be a member of the group (and if the 30-day period has expired) prior to the mailing of a notice of deficiency to the common parent, a separate notice of deficiency will be mailed in due course to the subsidiary in respect of its deficiency if it becomes necessary to enforce its liability.

(c) *Effect of dissolution of common parent corporation.* If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the Commissioner of such fact and designate, subject to the approval of the Commissioner, another member of the affiliated group to act as agent in its place, to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, the remaining members of the group may, subject to the approval of the Commissioner, designate another member of the group to act as such agent, and notice of such designation shall be given to the Commissioner. Until a notice in writing designating a new agent has been received by the Commissioner, any notice of deficiency or other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the group; or, if the Commissioner has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member of the group in respect of its liability.*

§ 23.17 *Waivers—(a) Effect of waiver given by common parent corporation.* Any consent given by the common parent corporation (or by an agent in accordance with paragraph (c) of section 23.16) extending the time within which

an assessment may be made or distraint or proceeding in court begun, in respect of the tax for a consolidated return period, shall be applicable (1) to each corporation which was a member of the affiliated group during any part of such period (whether or not any such corporation has ceased to be a member of the group), and (2) to each corporation the income of which was included in the consolidated return, or which filed Form 1122, for such period, even though it is subsequently determined that such corporation was not a member of the group.

(b) *Acceptance of waivers from common parent corporation and alleged subsidiary.* In no case will a separate waiver be accepted from a corporation the income of which was included in the consolidated return (for example, a corporation which the Commissioner determines was not a member of the affiliated group), or which filed Form 1122, unless a waiver is also obtained from the common parent corporation, or unless the Commissioner is dealing directly with such corporation to enforce its liability.*

§ 23.18 *Failure to comply with regulations—(a) Exclusion of a subsidiary from consolidated return.* If there has been a failure to include in the consolidated return the income of any subsidiary, or a failure to file any of the forms required by these regulations, notice thereof shall be given the common parent corporation by the Commissioner, and the tax liability of each member of the affiliated group shall be determined on the basis of separate returns unless such income is included or such forms are filed within the period prescribed in such notice, or any extension thereof, or unless under section 23.11 a consolidated return is required for such year.

(b) *Common parent corporation incorrectly designated in consolidated return.* If a consolidated return includes a corporation as the common parent and such corporation was not (under the provisions of section 141) the common parent, the tax liability of each corporation included in the return will be computed in the same manner as if separate returns had been made, unless, upon application, the Commissioner approves the making of a consolidated return, or unless under section 23.11 a consolidated return is required for such year.

(c) *Inclusion of one or more Subsidiaries not members of affiliated group.* If a consolidated return includes a corporation as a subsidiary and such corporation was not a member of the affiliated group during the consolidated return period, the tax liability of such corporation will be determined upon the basis of a separate return (but see paragraph (a)), and the consolidated return shall be considered as including only the corporations which were members of the group during such period. If the consolidated return includes two or more corporations

which are not members of the group but which constitute a separate affiliated group, the tax liability of the corporations constituting the separate group will be computed in the same manner as if separate returns had been made by such corporations, unless the Commissioner, upon application, approves the making of a consolidated return for the separate group, or unless under section 23.11 a consolidated return is required for the separate group.

(d) *Effect of authorization and consent filed pursuant to notice.* If Form 1122 is filed by any corporation, pursuant to a notice under paragraph (a) of this section, such corporation shall be considered for all purposes as having joined in the making of the consolidated return.

(e) *Allocation of payments in the event of change by one or more corporations to separate returns.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return and the tax liability of one or more of the corporations included in the consolidated return is to be computed in the same manner as if separate returns had been made, the amounts so paid shall be allocated between the affiliated group composed of the corporations properly included in the consolidated return and each of the corporations the tax liability of which is to be computed on a separate basis, in such manner as the corporations included in the consolidated return may, subject to the approval of the Commissioner, agree upon, or, in the absence of an agreement, upon the bases used in the respective computations of the normal tax and any surtaxes as shown upon the consolidated return.*

COMPUTATION OF TAX, RECOGNITION OF GAIN OR LOSS, AND BASIS

§ 23.30 *Computation of tax—(a) Years beginning prior to January 1, 1940.* In the case of an affiliated group which makes, or is required to make, a consolidated return for any taxable year beginning prior to January 1, 1940, the tax liability of each corporation for the period during such year that it was a member of such group shall be computed, in accordance with the provisions of section 13 of the Code prior to its amendment by section 201 of the Revenue Act of 1939, upon the basis of the consolidated adjusted net income if the consolidated net income is more than \$25,000, or, in accordance with the provisions of section 14 of the Code prior to such amendment, upon the basis of the consolidated special class net income of the group if the consolidated net income is not more than \$25,000, such bases to be determined in accordance with these regulations. (See, however, section 23.15, relating to the liability of the members of the group.)

(b) *Years beginning after December 31, 1939.* In the case of an affiliated group which makes, or is required to make, a consolidated return for any tax-

able year beginning after December 31, 1939, the tax liability of each corporation for the period during such year that it was a member of such group shall be computed upon the consolidated normal-tax net income of the group, determined in accordance with these regulations. (See, however, section 23.15, relating to the liability of the members of the group.)"

§ 23.31 Bases of tax computation—

(a) *Definitions.* In the case of an affiliated group of corporations which makes or is required to make a consolidated return for any taxable year, and except as otherwise provided in these regulations—

(1) The consolidated net income shall be the combined net income of the several affiliated corporations;

(2) The consolidated adjusted net income shall be the combined adjusted net income of the several affiliated corporations;

(3) The consolidated credit for dividends received shall be an amount equal to the combined credit of the several affiliated corporations provided by section 26 (b) relating to dividends received, but not in excess of 85 percent of the consolidated adjusted net income;

(4) The consolidated dividends paid credit shall be the sum of:

(A) The consolidated basic surtax credit, and

(B) The consolidated dividend carry-over, and, for the purposes of section 13 of the Code prior to its amendment by section 201 of the Revenue Act of 1939,

(C) The consolidated deficit credit, and

(D) The consolidated credit relating to the payment or retirement of indebtedness;

(5) The consolidated basic surtax credit shall be the sum of:

(A) An amount equal to the sum of the dividends paid by the several affiliated corporations during the taxable year, increased by the consolidated consent dividends credit and reduced by the consolidated credit relating to interest on certain obligations of the United States and Government corporations, and

(B) The consolidated net operating loss credit;

(6) The consolidated consent dividends credit shall be the combined consent dividends credits of the several affiliated corporations;

(7) The consolidated credit relating to interest on certain obligations of the United States and Government corporations shall be an amount equal to the sum of such credits computed separately with respect to each of the several affiliated corporations;

(8) The consolidated net operating loss credit shall be an amount equal to the consolidated net operating loss for the preceding taxable year, but not in excess of the consolidated adjusted net income for the taxable year;

(9) The consolidated net operating loss for the purposes of the consolidated net operating loss credit shall be an amount equal to the excess of the combined net operating losses of the several affiliated corporations having net operating losses (computed subject to the exceptions and limitations provided in section 26 (c) (2) of the Code) over the combined net income (adjusted with respect to the exceptions and limitations provided in such subsection in connection with the computation of net operating losses); however, a net operating loss sustained by a corporation for a taxable year prior to the first taxable year in respect of which its income is included in the consolidated return of an affiliated group shall be included as a part of the consolidated net operating loss only to the extent that such net operating loss is not in excess of the adjusted net income of such corporation for such first taxable year;

(10) The consolidated dividend carry-over, subject to the qualifications provided in section 27 (c) with respect to preceding taxable years beginning in 1936 and 1937, shall be the sum of:

(A) The amount of the consolidated basic surtax credit for the second preceding taxable year, reduced by the consolidated adjusted net income for such year, and further reduced by the amount, if any, by which the consolidated adjusted net income for the first preceding taxable year exceeds the sum of:

(i) The consolidated basic surtax credit for such year, and

(ii) The excess, if any, of the consolidated basic surtax credit for the third preceding taxable year (if not beginning before January 1, 1936) over the consolidated adjusted net income for such year,

(B) The amount, if any, by which the consolidated basic surtax credit for the first preceding taxable year exceeds the consolidated adjusted net income for such year,

(C) For the first taxable year for which the income of a corporation is included in a consolidated return, the amount of any dividend carry-over to which such corporation would have been entitled if it had filed a separate return, and

(D) For the second taxable year for which the income of a corporation is included in a consolidated return, or is required to be so included, the amount of any dividend carry-over based upon dividend distributions made during its second preceding taxable year to which such corporation would have been entitled if it had continued to file separate returns, but only to the extent that such dividend distributions would have been a factor in the computation of the consolidated dividend carry-over of the affiliated group if such corporation had been a member of the group and its income had been included in a consolidated return of the group for the second

preceding taxable year, and if the basic surtax credit and the adjusted net income of such corporation for the second preceding taxable year were the consolidated basic surtax credit and the consolidated adjusted net income of the group;

(aa) *Definitions—Taxable years beginning prior to January 1, 1940.* In the case of an affiliated group of corporations which makes or is required to make a consolidated return for a taxable year beginning prior to January 1, 1940, and except as otherwise provided in these regulations—

(1) The consolidated special class net income shall be the combined special class net income of the several affiliated corporations;

(2) The consolidated deficit credit shall be an amount equal to the sum of the credits of the several affiliated corporations provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits;

(3) The consolidated credit relating to amounts used or irrevocably set aside to pay or to retire indebtedness shall be an amount equal to the sum of such credits computed separately with respect to each of the affiliated corporations.

(aaa) *Definitions—Taxable years beginning after December 31, 1939.* In the case of an affiliated group of corporations which makes or is required to make a consolidated return for a taxable year beginning after December 31, 1939, and except as otherwise provided in these regulations—

(1) The consolidated normal-tax net income shall be the combined normal-tax net income of the several affiliated corporations;

(2) The consolidated net operating loss deduction shall be an amount equal to the consolidated net operating loss carry-over reduced by the amount, if any, by which the consolidated net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4) of section 122 of the Code as amended by section 211 of the Revenue Act of 1939) exceeds the consolidated normal-tax net income (computed without any net operating loss deduction);

(3) The consolidated net operating loss carry-over shall be the sum of:

(A) The amount, if any, of the consolidated net operating loss for the first preceding taxable year, and

(B) The amount of the consolidated net operating loss, if any, for the second preceding taxable year reduced by the excess, if any, of the consolidated net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4) of section 122 of the Code as amended by section 211 of the Revenue Act of 1939) for the first preceding taxable year over the consolidated net operating loss for the third preceding taxable year.

(4) The consolidated net operating loss for the purposes of the consolidated net operating loss deduction shall be an amount equal to the excess of the combined net operating losses of the several affiliated corporations having net operating losses (computed subject to the exceptions and limitations provided in section 122 (d) of the Code as amended by section 211 of the Revenue Act of 1939) over the combined net income (adjusted with respect to the exceptions and limitations provided in such subsection in connection with the computation of net operating losses); however, a net operating loss sustained by a corporation for a taxable year prior to the first taxable year in respect of which its income is included in the consolidated return of an affiliated group shall be included as a part of the consolidated net operating loss only to the extent that—

(A) Such net operating loss for the first preceding taxable year is not in excess of the sum of the adjusted net income of such corporation for the first and second taxable years in respect of which its income is included in the consolidated return.

(B) The excess of such net operating loss for the second preceding taxable year over the net income, if any, of such corporation for the first preceding taxable year (computed without the benefit of any net operating loss deduction) is not in excess of the adjusted net income of such corporation for such first taxable year, or

(C) The sum of such net operating losses for the first and second preceding taxable years is not in excess of the sum of the adjusted net income of such corporation for such first and second taxable years.

(b) *Computations.* The net income of the several corporations shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations subject to the elimination of unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in these regulations as intercompany transactions). Intercompany profits and losses which have been realized by the group through final transactions with persons other than members of the group, and intercompany transactions which do not affect the consolidated taxable net income, shall not be eliminated. As used in this paragraph, the term "net income" includes the case in which the allowable deductions of a member exceed its gross income.

The adjusted net income, the special class net income, the normal-tax net income, the dividends received credit provided by section 26 (b), the amount of dividends paid, the credit allowable pursuant to the provisions of section 28 relating to consent dividends, the credit provided by section 26 (a) relating to

interest upon certain obligations of the United States and Government corporations, the net operating loss for the purposes of the credit as defined in section 26 (c) (2), the net operating loss for the purposes of the deduction as defined in section 22 (a), the credit provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits, and the credit provided by section 27 (a) (4) relating to amounts used or irrevocably set aside to pay or to retire indebtedness, shall be computed and determined in the case of each affiliated corporation in the same manner and subject to the same conditions as if a separate return were filed, except—

(1) The net income used in any such computation shall be the net income of the corporation determined in accordance with the provisions of this section;

(2) In the computation of the net operating loss of the corporation, the provisions of this section pertaining to the determination of net income shall apply;

(3) In the computation of the dividends received credit, there shall be excluded all dividends received from other members of the affiliated group;

(4) In the computation of dividends paid, there shall be excluded all dividends paid by one member of the group to another;

(5) In the computation of the consent dividends credit, no amounts shall be included with respect to consents given by other members of the group;

(6) In the case of any subsidiary, the credit provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits shall not be greater than the excess of the adjusted net income of such subsidiary over its net operating loss credit; and

(7) The credit provided by section 27 (a) (4) relating to amounts used or irrevocably set aside to pay or to retire indebtedness shall be computed in disregard of any such payment or setting aside to the extent that, on December 31, 1937, or at any time thereafter, such indebtedness was owned, directly or indirectly, by another member of the group.

(c) *Statements and schedules for subsidiaries.* The statement of gross income and deductions and the several schedules required by the instructions on the return must be prepared and filed by the common parent corporation in columnar form so that the details of the items of gross income, deductions, and credits, for each member of the affiliated group, may be readily audited. Such statements and schedules shall include in columnar form a reconciliation of surplus for each such corporation, together with a reconciliation of the consolidated surplus. Consolidated balance sheets as of the beginning and close of the taxable year of the group, taken from the books of the members of the group, shall accompany the consolidated return prepared in a form

similar to that required for reconciliation of surplus.

(d) *Net operating loss credit, net operating loss deduction, and dividend carry-over after consolidated return period.* A consolidated net operating loss sustained by an affiliated group, or dividends paid by any member of such group, during any consolidated return period of the group shall be used in computing the dividends paid credit, or the net income as the case may be, in the return of the common parent corporation (or in the consolidated return of another affiliated group of which such common parent becomes a member) for a taxable year subsequent to the last consolidated return period of the group in the same manner, to the same extent, and upon the same conditions as if the group had been a single corporation (the common parent corporation) when such loss was sustained or such dividends were paid; but no net operating loss sustained or dividends paid during a consolidated return period of an affiliated group shall be used in computing the dividends paid credit or net income of a subsidiary (or the consolidated dividends paid credit or net income of another affiliated group of which such subsidiary becomes a member) for any taxable year subsequent to the last consolidated return period of the group. No part of any dividends paid by a corporation prior to a consolidated return period of an affiliated group of which such corporation becomes a subsidiary shall be used in computing the dividends paid credit of such corporation for any taxable year subsequent to the consolidated return period, but any part of such dividends which, except for this restriction, might be so used, shall be treated as having been paid by the common parent corporation of the group in a year in which such common parent had no adjusted net income and had distributed no other dividends. No part of any net operating loss sustained by a corporation prior to a consolidated return period of an affiliated group of which such corporation becomes a subsidiary shall be used in computing the net income of such corporation for any taxable year subsequent to the consolidated return period, but any part of such net operating loss which, except for this restriction, might be so used, shall be treated as having been sustained by the common parent corporation of the group.

(e) *Taxable year.* Any period of less than 12 months for which either a separate return or a consolidated return is filed, under the provisions of section 23.13, shall be considered as a taxable year.

§ 23.32 *Method of computation of income for period of less than 12 months.* If a corporation, during the taxable year of the group, becomes a member or ceases to be a member of an affiliated group which makes or is required to make a consolidated return for such year, the income of such corporation to be included

in the consolidated return shall be computed on the basis of its income as shown by its books if the accounts are so kept that the income for the period during which it is a member of the group can be clearly and accurately determined. If the accounts are not so kept, the income to be included in the consolidated return shall be computed on the basis of that proportion of its income (subject to the elimination of items exempt from taxation and the addition of items not allowable as deductions in computing net income) for the full period covered by its books which the number of days for which its income is included in the consolidated return bears to the number of days in the full period covered by its books; but in the discretion of the Commissioner there may be eliminated before the proration is made items of income or deduction clearly and accurately determined to be attributable to particular periods, and, after the proration is made, such eliminated items will be added to (if items of income) or deducted from (if deductible items) the income determined by proration for the period to which such items are applicable. The credits allowable under sections 13 and 14 of the Code prior to its amendment by section 201 of the Revenue Act of 1939, and under section 13 of the Code as amended shall be given for the period to which they are properly applicable under the facts in the case.*

§ 23.33 Gain or loss from sale of stock or bonds. Gain or loss from the sale or other disposition (whether or not during a consolidated return period), by a corporation which during any period of time (included in a taxable year beginning after December 31, 1938) has been a member of an affiliated group which makes or is required to make a consolidated return, of any share of stock or any bond or obligation issued by another corporation which during any part of such period was a member of the same group, shall be determined, and the extent to which such gain or loss shall be recognized and shall be taken into account shall also be determined, in the same manner, to the same extent, and upon the same conditions as though such corporations had never been affiliated (see sections 111 to 115, inclusive, and section 117, and the regulations thereunder), except—

(1) In the case of a disposition (by sale, dissolution, or otherwise) during a consolidated return period to another member of the group (see sections 23.31 and 23.37); and

(2) That the basis for determining the gain or loss, in the case of shares of stock held during any part of a consolidated return period, shall be determined in accordance with section 23.34; and

(3) As provided in sections 23.35 and 23.36 (imposing certain limitations upon losses otherwise allowable upon sales of stock or bonds).*

§ 23.34 Sale of stock—Basis for determining gain or loss—(a) Scope of section. This section prescribes the basis for determining the gain or loss upon any sale or other disposition (hereinafter referred to as "sale") by a corporation which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for the taxable year 1929 or any subsequent taxable year, of any share of stock issued by another member of such group (whether issued before or during the period that it was a member of the group and whether issued before, during, or after the taxable year 1929), and held by the selling corporation during any part of a period for which a consolidated return is made or required under these regulations.

For the basis in the case of sales which do not break the affiliation, see paragraph (b).

For the basis in the case of sales which break the affiliation and which are made within the period during which the selling corporation is a member of the affiliated group (whether or not during a consolidated return period), see paragraph (c).

For the basis in the case of sales made after the selling corporation has ceased to be a member of the affiliated group, see paragraph (d).

For the basis in the case of sales of bonds, see section 23.35.

(b) *Sales which do not break affiliation.* If, notwithstanding any such sale, the issuing corporation remains a member of the affiliated group, the basis shall be determined and adjusted in the same manner as if the selling corporation and the issuing corporation had never been members of an affiliated group. (See sections 111 to 115, inclusive, of the Code.)

(c) *Sales which break affiliation made while selling corporation is member of affiliated group.* If the sale is made within a period during which the selling corporation is a member of the affiliated group (whether or not during a consolidated return period), and if, as a result of such sale, the issuing corporation ceases to be a member of the group, the basis shall be determined as follows:

(1) The aggregate basis of all shares of stock of the issuing corporation held by each member of the affiliated group (exclusive of the issuing corporation) immediately prior to the sale, shall be determined separately for each member of the group, and adjusted in accordance with the Code (see sections 111 to 115, inclusive);

(2) From the sum of the aggregate bases as determined in paragraph (1), there shall be deducted the sum of the losses of such issuing corporation sustained during each of the consolidated return periods (including only the taxable year 1929 and subsequent taxable years) after such corporation became a member of the affiliated group and prior

to the sale of the stock to the extent that such losses could not have been availed of by such corporation as a net loss in computing its net income for such periods if it had made a separate return for each of such periods. For any taxable year in which the group sustained a consolidated loss not availed of in subsequent years as a deduction under net loss provisions, the amount deducted under this paragraph shall be reduced by an amount equal to that proportion of such consolidated loss which the loss of the issuing corporation for the year in which such loss was sustained bears to the aggregate losses of the members of the group;

(3) The sum of the aggregate bases of all shares of stock, after making the deduction under paragraph (2), shall then be apportioned among the members of the affiliated group which hold stock of the issuing corporation, by allocating to each such member that proportion of the sum of the aggregate bases so reduced which the aggregate basis of the stock in the issuing corporation held by such member bears to the sum of the aggregate bases;

(4) The aggregate basis as determined under paragraph (3) for each member of the affiliated group shall then be equitably apportioned among the several classes of stock of the issuing corporation held by such member according to the circumstances of the case—ordinarily by allocating to each class of such stock that proportion of the aggregate basis which the basis of each class of such stock held by it at the time of the sale is to the sum of the bases of the several classes of such stock held by it;

(5) The basis of each share of stock of each class held by a member of the affiliated group shall then be determined by dividing the basis apportioned to such class under paragraph (4) by the total number of shares of such class held by it.

Examples:

APPLICATION OF PARAGRAPH (C) (2)

Corporations P and S are affiliated and make consolidated returns showing the following gains and losses (losses indicated by parentheses):

Year	P	S	Consolidated
1929	(\$10,000)	(\$20,000)	(\$30,000)
1930	15,000	(18,000)	(3,000)
1931	13,000	(10,000)	3,000
1932	12,000	8,000	20,000
1933	8,000	(4,000)	4,000
1934	10,000	(20,000)	(10,000)
1935	20,000	30,000	50,000
1936	10,000	20,000	30,000
1937	10,000	(5,000)	5,000
1938	20,000	(20,000)	(10,000)

On January 1, 1939, P sells the stock of S. The adjustment to be made to the basis of the stock for losses sustained by S during the consolidated return periods is \$58,000, computed as follows:

Year of loss	Amount of loss	Extent separately available to S as net loss deduction	Reduction of adjustment by reason of consolidated loss	Adjustment under par. (c) (2)
1929	\$20,000	\$0	\$18,000	\$2,000
1930	18,000	0	3,000	15,000
1931	10,000	8,000	0	2,000
1932	4,000	0	0	4,000
1934	20,000	0	10,000	10,000
1937	5,000	0	0	5,000
1938	30,000	0	10,000	20,000
	107,000	8,000	41,000	68,000

APPLICATION OF PARAGRAPH (c) (3)

Corporations P, S₁, and S₂, are affiliated and make consolidated calendar year returns for 1937, 1938, and 1939. The aggregate bases of the stocks of the affiliated corporations in the hands of the members of the affiliated groups are as follows:

	Common	Percent
Aggregate basis of S ₁ stock in the hands of P	\$100,000	100
Aggregate basis of S ₂ stock in the hands of P	50,000	50
Aggregate basis of S ₂ stock in the hands of S ₁	50,000	50

On January 1, 1940, P sells its stock in S₂. The sum of the aggregate bases of the stock of S₂ in the hands of P and S₁ is \$100,000. Assuming that the adjustment under paragraph (c) (2) is \$20,000, such sum is reduced to \$80,000. This sum (\$80,000) is apportioned between P and S₁ by allocating to each corporation \$40,000, that is, that proportion of the \$80,000 which the aggregate basis of S₂ stock in the hands of each corporation (\$50,000) bears to the sum of the aggregate bases (\$100,000). Accordingly, the basis for determining gain or loss from the sale of S₂ stock by P is \$40,000.

(d) *Sales after selling corporation has ceased to be member of affiliated group.* If the sale is made after the selling corporation has ceased to be a member of the affiliated group, such basis shall be determined in accordance with paragraph (c) of this section, except that—

(1) The aggregate basis (under paragraph (c) (1)) shall be determined for all shares of the issuing corporation held by each member of the group immediately prior to the time the selling corporation ceased to be a member of the group (rather than immediately prior to the sale);

(2) The allocations (under paragraph (c) (3)) shall be made to each member of the group which held stock of the issuing corporation immediately prior to the time the selling corporation ceased to be a member of the group (rather than to the members holding such stock at the time of the sale); and

(3) The basis of each share of stock held by the selling corporation (determined, as above, as of the time the sell-

ing corporation ceased to be a member of the group) shall then be adjusted in accordance with the Code (see, particularly, sections 111 to 115, inclusive), in order to determine the basis at the time of the sale.

(e) *Definition of "loss," "consolidated loss," and "net loss."* As used in this section the term "loss" means the excess of the allowable deductions over the gross income and the term "consolidated loss" means the excess of the sum of the losses, separately computed, over the sum of the net incomes, separately computed, of the members of the affiliated group, determined in accordance with the provisions of the Code, or the Revenue Act applicable to the period. See section 23.31. The term "net loss" means a net loss, or a net operating loss, determined in accordance with the provisions of the Code, or the Revenue Act applicable to the period.*

§ 23.35 *Sale of bonds—Basis for determining gain or loss.* In the case of a sale or other disposition by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for the taxable year 1929 or any subsequent taxable year, of bonds or obligations issued by another member of such group (whether or not issued while it was a member of the group and whether issued before, during, or after the taxable year 1929), the basis of each bond or obligation, for determining the gain or loss upon such sale or other disposition, shall be determined in accordance with the Code (see, particularly, section 113), but the amount of any loss otherwise allowable shall be decreased by the excess (if any) of the aggregate of the deductions computed under paragraph (c) (2) of section 23.34 over the sum of the aggregate bases of the stock of the issuing corporation as computed under paragraph (c) (1) or (d), as the case may be, held by the members of the group. (See, also, section 23.40, relating to disallowance of loss upon intercompany bad debts.)*

§ 23.36 *Limitation on allowable losses on sale of stock or bonds.* (a) *General rule.* No loss shall be allowed under section 23.33, 23.34, or 23.35 upon the sale or other disposition of stock or bonds or obligations to the extent that such loss is attributable to (1) transfers of assets within the affiliated group (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period in which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1938), or (2) a distribution during a period in which the corporations were affiliated of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group.

(b) *Qualification of general rule.* Paragraph (a) of this section shall not be considered as in any way limiting the

operation of the provisions of the Code relating to the basis for determining gain or loss upon the sale or other disposition of property (see sections 111 to 115, inclusive), but as being in amplification of and not in substitution for such provisions; subject, however, to this qualification: that to the extent that the transfers of assets referred to in paragraph (a) are taken into account under the terms of the Code in making adjustments in the basis, such transfers will not be taken into account in denying losses under paragraph (a).*

§ 23.37 *Liquidations—Recognition of gain or loss.* (a) *During consolidated return period.* Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock, except—

(1) Where such distribution is in complete liquidation and redemption of all of the stock (whether in one distribution or a series), falls without the provisions of section 112 (b) (6), and is the result of a bona fide termination of the business and operations of such member of the group, in which case it shall be treated as a sale of the stock, the adjustments specified in sections 23.34 and 23.35 will be made, and section 23.36 will be applicable; and

(2) Where such a distribution without the provisions of section 112 (b) (6) is one made in cash in an amount in excess of the adjusted basis of the stock.

When the business and operations of the liquidated member of the affiliated group are continued by another member of the group, it shall not be considered a bona fide termination of the business and operations of the liquidated member. (With respect to the acquisition of its bonds by the issuing company, see section 23.41 (b).)

For the purpose of determining whether an affiliated corporation receiving property in a liquidating distribution qualifies under the provisions of section 112 (b) (6) (A), the aggregate amount of the stock of the liquidated corporation owned by the several members of the affiliated group on the date of the adoption of the plan of liquidation and at all times subsequent thereto and prior to the receipt of the property in liquidation shall be considered as owned by the distributee.

(b) *After consolidated return period.* Any such distribution after a consolidated return period, whether in complete or partial liquidation, except a complete liquidation within the provisions of section 112 (b) (6), shall be treated as a sale of the stock, and the adjustments specified in sections 23.34 and 23.35 will be made, and section 23.36 will be applicable.*

§ 23.38 *Basis of property—(a) General rule.* Subject to the provisions of paragraphs (b) and (c) and except as otherwise provided in section 23.34, the

basis during a consolidated return period for determining the gain or loss from the sale or other disposition of property, or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed, shall be determined and adjusted in the same manner as if the corporations were not affiliated (see sections 111 to 115, inclusive), whether such property was acquired before or during a consolidated return period. Such basis immediately after a consolidated return period (whether the affiliation has been broken or whether the privilege of making a consolidated return is not exercised) shall be the same as immediately prior to the close of such period.

(b) *Intercompany transactions.* The basis prescribed in paragraph (a) shall not be affected by reason of a transfer during a consolidated return period, other than upon liquidation as provided in (c) (whether by sale, gift, dividend, or otherwise), from a member of the affiliated group to another member of such group.

(c) *Basis after liquidation.* (1) Where property is acquired during a taxable year beginning after December 31, 1938, upon a distribution described in section 23.37 (a) in which gain or loss is recognized to the distributee, the basis of such property shall be its fair market value at date of acquisition.

(2) Where property is acquired during a taxable year beginning after December 31, 1938, upon a distribution in which gain or loss to the distributee is not recognized pursuant to the provisions of section 112 (b) (6), the basis of such property shall be the same as it would be in the hands of the transferor.

(3) Where property is acquired during a taxable year beginning after December 31, 1938, upon a distribution (not a complete liquidation within the provisions of section 112 (b) (6)) in which gain or loss to the distributee is not recognized as provided in section 23.37 (a), the basis of such property shall be the same as the basis (determined in accordance with sections 111 to 115, inclusive, and section 23.34) of the stock exchanged therefor, adjusted—

(A) For the transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1938);

(B) For distributions during a consolidated return period of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group; and

(C) For cash received in the distribution.

(4) Where property was acquired during the month of December, 1938, upon a

distribution in which gain or loss to the distributee was recognized pursuant to the provisions of section 112 (b) (7) of the Revenue Act of 1938, the basis of such property shall be the same as the basis (determined in accordance with sections 111 to 115, inclusive, and section 23.34) of the stock exchanged therefor, adjusted—

(A) For the transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1937);

(B) For distributions during a consolidated return period of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group;

(C) For cash received in the distribution; and

(D) For the amount of gain recognized to the distributee in the liquidation.

(d) *Basis not affected by acquisition or sale of stock.* Neither the acquisition of stock of a corporation nor its sale or other disposition shall affect the basis of the property of such corporation for determining gain or loss or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed.*

§ 23.39 *Inventories.*—(a) *Consolidated return made after separate return.* Where a corporation has made a separate return and in the succeeding taxable year is a member of an affiliated group which makes a consolidated return, the value of its opening inventory to be used in computing the consolidated net income for such succeeding taxable year shall be the proper value of the closing inventory used in computing its net income for the preceding taxable year. For example, Corporation S made a separate return for 1938. It becomes a member of an affiliated group for 1939. Its closing inventory for 1938 was \$100,000. The opening inventory for 1939 will be \$100,000, assuming that its closing inventory for 1938 was properly computed.

(b) *Separate return made after consolidated return.* If a corporation has been a member of an affiliated group which has made a consolidated return and in the succeeding taxable year makes a separate return, the value of the opening inventory to be used in computing its net income for such succeeding taxable year shall be the proper value of the closing inventory used in computing consolidated net income for the preceding taxable year. For example, Corporation S joins in making a consolidated return for 1938 and makes a separate return for 1939. The proper value of its closing inventory for 1938 after eliminating intercompany profits is \$90,000. Ac-

cordingly its opening inventory for computing its net income for 1939 will be \$90,000.*

§ 23.40 *Bad debts.*—(a) *Deduction during consolidated return period.* No deduction shall be allowed during a consolidated return period to any member of the affiliated group on accounts of worthlessness in whole or in part of any obligation (including account receivable, bonds, notes, debts and claims of whatsoever nature) of any other member of the group.

(b) *Limitation on allowance after consolidated return period.* The rules applicable to the allowance of losses upon the sale of bonds shall be applicable to the allowance after the consolidated return period as bad debts of obligations (including accounts receivable) of a member of an affiliated group acquired in any way by another member of the group prior to or during the consolidated return period. (See section 23.35.)*

§ 23.41 *Sale and retirement by corporation of its bonds.*—(a) *Issued at discount or premium.* If a corporation which during any taxable year (beginning after December 31, 1938) has been a member of an affiliated group which makes or is required to make a consolidated return, has issued its bonds at a discount or premium (whether before, during, or after the first taxable year beginning after December 31, 1938, and whether or not during a consolidated return period), deduction will be allowed for the amortization of the discount, and income included for the amortization of the premium, in the same manner, to the same extent, and upon the same conditions as if the corporation had never been affiliated, except that no deduction for amortization of discount shall be allowed, and no income shall be included for amortization of premium, during a period for which a consolidated return is made, on bonds of one member of the group owned by another member of the group.

(b) *Acquisition of bonds by issuing company.* If a corporation which during any taxable year (beginning after December 31, 1938) has been a member of an affiliated group which makes or is required to make a consolidated return, acquires its bonds (whether or not from another member of such group and whether or not during a consolidated return period), gain or loss shall be recognized in the same manner, to the same extent, and upon the same conditions as if the corporation had never been affiliated, except that, if such bonds are acquired from another member of the group during a consolidated return period, in determining the gain or loss to the issuing company from such acquisition, the basis thereof to such other member of the group shall be deemed the purchase price.*

§ 23.42 *Limitation on capital losses.* The limitations provided by sections 23 (g) and (k) and 117 (d) upon deduc-

tions for losses from sales or exchanges of capital assets shall be applied, in respect of such losses sustained during a consolidated return period, to each member of the affiliated group in the same manner, to the same extent and upon the same conditions as if a separate return were filed by such member, except that gain or loss will not be recognized upon sales or exchanges between members of the group. See, however, section 23.37.*

§ 23.43 *Credit for foreign taxes.* The credit allowed a domestic corporation for taxes paid or accrued during the consolidated return period to any foreign country or to any possession of the United States (under section 131) shall be computed in the same manner, and upon the same conditions as if a separate return were filed by such corporation, except—

(1) In computing the credit for a taxable year beginning prior to January 1, 1940, the "entire net income" for the taxable year shall be its separate net income as defined in section 23.31 (b), and the "tax against which such credit is taken" shall be that proportion of the tax computed upon the consolidated net income of the affiliated group which is allocable to such corporation.

(2) In computing the credit for a taxable year beginning after December 31, 1939, the "normal-tax net income" for the taxable year shall be its separate normal-tax net income as defined in section 23.31 (b), and the "tax against which such credit is taken" shall be that proportion of the tax computed upon the consolidated normal-tax net income of the affiliated group which is allocable to such corporation, and

(3) The aggregate of the credits for foreign taxes computed for each member of the group shall be credited against the tax computed upon the consolidated net income of the group, or upon the consolidated normal-tax net income of the group, as the case may be.

For example, Corporations P, S, and S₁, liable in fact to the tax computed without reduction by reason of any dividends received credit or dividends paid credit, and having no income consisting of interest on obligations of the United States and Government corporations, are affiliated and make a consolidated return for 1939 showing the following results (losses indicated by parentheses):

Company	Domestic income		Foreign income		Total income	Foreign tax	
			British	Canadian		British	Canadian
P	\$85,000	\$10,000	\$5,000		\$100,000	\$2,000	\$500
S ₁	(20,000)			(20,000)	(20,000)		
S ₂	30,000	(5,000)	5,000	50,000	80,000		500
	115,000	5,000	10,000		130,000	2,000	1,000

Consolidated net income.....\$130,000
Income tax.....24,700

Allocation of tax:

P = $\frac{100,000}{150,000} \times \$24,700 = \$16,466.67$
S₁ =None
S₂ = $\frac{50,000}{150,000} \times \$24,700 = \$8,233.33$
S₂ = $\frac{150,000}{150,000} \times \$24,700 = \$24,700.00$

Corporation P—

Limitation under section 131 (b) (1):

British income \$10,000
Total income 100,000 $\times \$16,466.67 = \$1,646.67$
British tax.....2,000.00

Credit limitation.....\$1,646.67
Canadian income \$5,000
Total income 100,000 $\times \$16,466.67 = \823.33
Canadian tax.....500.00
Credit limitation (not in excess of tax paid).....500.00
Total limitation.....2,146.67

Limitation under section 131 (b) (2):

Total foreign income \$15,000
Total income 100,000 $\times \$16,466.67 = \$2,470.00$
Credit allowable.....2,146.67

Corporation S₁—

Limitation under section 131 (b) (1):

Canadian income \$5,000
Total income 50,000 $\times \$8,233.33 = \823.33
Canadian tax.....500.00
Credit limitation (not in excess of tax paid).....\$500.00

Limitation under section 131 (b) (2):

Total foreign income (none)
Total income \$50,000 $\times \$8,233.33 =$0
Credit limitation.....0
Credit allowable.....None

Aggregate credits for foreign tax:

Corporation P.....\$2,146.67
Corporation S₁.....None
Total.....2,146.67

Income tax payable:

Income tax.....\$24,700.00
Credit for foreign income taxes.....2,146.67
Balance of income tax.....22,553.33

§ 23.44 *Methods of accounting.*—(a) In general. For the purpose of determining consolidated net income, all members of the affiliated group shall adopt that method of accounting which clearly reflects the consolidated net income. A method of accounting which does not treat with reasonable consistency all items of gross income and deductions of the various members of the group shall not be regarded as clearly reflecting the consolidated net income. For example, one member of the group will not be permitted to report items of income or deductions on the cash method of accounting, while another member of the same group reports the same or similar items on the accrual method. The provisions of this paragraph are subject to the exceptions stated in paragraph (b).

(b) *Combination of methods.* For the purpose of determining consolidated net income, if the members of an affiliated group have established different methods of accounting, each member may retain such method with the consent of the Commissioner, provided that the consoli-

dated net income is clearly reflected, and, provided further that intercompany transactions affecting consolidated net income, between members of the group shall be eliminated and adjustments on account of such transactions shall be made with reference to a uniform method of accounting, to be selected by the members of the group with the consent of the Commissioner.

(c) *Change to accrual method.* In the case of a corporation which previously has reported its income (whether in a separate or a consolidated return) in accordance with a method other than the accrual method and is required under this section to report its income for the taxable year under the accrual method, items of income which accrued prior to the taxable year but were properly omitted in the determination of net income under the method of accounting formerly followed shall be included in the income for the taxable year of the change in accounting method, and items of income which were properly included in the determination

of net income under the method of accounting formerly followed shall not be included in the income for the taxable year of the change or any subsequent year. In such a case, deductions which accrued prior to the taxable year but which were properly omitted in the determination of net income under the method of accounting formerly followed shall be allowed for the taxable year of the change in accounting method, and deductions which were properly included in the determination of net income under the method of accounting formerly followed shall not be allowed in the determination of net income for the taxable year of change or any subsequent year.*

(SEAL) GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, December 28, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 40-26; Filed, January 2, 1940;
12:43 p. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER I—VETERANS' ADMINISTRATION

CONCURRENT PAYMENT OF BENEFITS

§ 2.1296 *Concurrent payment of benefits to same person.* (A) Notwithstanding the provisions of Section 4715, Revised Statutes, and Sec. 8.10, paragraph XIII, a person in receipt of death compensation or pension either under the reenacted pension statutes, Section 8.01, or Title III, Public No. 141, 73d Congress, or Public No. 484, 73d Congress, may also if otherwise entitled, receive disability compensation under Public No. 141, 73d Congress, on account of his or her own service during the World War. (A.D. 325, 335)

(B) For the purposes of Section 8.012, paragraph I, as amended by Public No. 159, 75th Congress, (Act of June 23, 1937) and as modified by section 304 of Public No. 732, 75th Congress (Act of June 25, 1938), pension shall not be paid concurrently with active duty pay or United States employees compensation. Where a naval reservist who is eligible for pension is also eligible for the benefits of the United States Employees Compensation Act he shall elect which benefit he shall receive.

(C) Except where expressly prohibited by law, (such as in sections 211 and 212 of the World War Veterans Act, 1924, as amended, and section 31 of Public No. 141, 73d Congress) compensation or pension under the Veterans Administration may be paid concurrently, if otherwise in order, with compensation under the United States Employees' Compensation Act of September 7, 1916, as amended. (December 29, 1939)

§ 2.2550 *Concurrent payment of two benefits to the same person.* (A) For the

purposes of the General Law, the service pension acts granting pension to widows and children and dependent parents of veterans of the Civil and Indian Wars, and the pension laws reenacted by Public No. 141, 73d Congress (Act of March 28, 1934), and Public No. 269, 74th Congress (Act of August 13, 1935), not more than one pension shall be allowed at the same time to the same person. (4715 R.S.)

(B) (1) Death pension under Sec. 8.013, death pension under section 30, Title III, Public No. 141, 73d Congress (Act of March 28, 1934); death pension under Public No. 269, 74th Congress (Act of August 13, 1935); death pension predicated on service rendered prior to April 21, 1898; and compensation under Public No. 484, 73d Congress, (Act of June 28, 1934) as amended, except as barred to members of the army nurse corps (female) or of the navy nurse corps (female) by section 211 of the World War Veterans Act, 1924, as amended, or to a person receiving active service or retirement pay by section 212 of the World War Veterans Act, as amended, may be paid concurrently with compensation under the United States Employees Compensation Act (Act of September 7, 1916) as amended.

(2) Pension may not be paid the widow, child or dependent parents of naval reservists because of death resulting from physical injury due to naval service rendered between July 1, 1925, and June 15, 1933, inasmuch as jurisdiction over the payment of benefits covering this period is vested exclusively in the United States Employees Compensation Commission. (Section 14, Act of February 28, 1925; 34 U.S.C. 762)

(3) Death pension or death compensation may not be paid a widow, child or dependent parent under section 31, Title III, Public No. 141, 73d Congress, (Act of March 28, 1934), as amended, concurrently with compensation granted under the United States Employees Compensation Act (Act of September 7, 1916) as amended.

(C) (1) Payment of death pension under Sec. 8.01 and disability pension under Sec. 8.01 is barred by Sec. 8.10, paragraph XIII. (Solicitor, August 22, 1934)

(2) Payment of disability pension under the reenacted Act of June 2, 1930, and death pension under the reenacted Act of May 1, 1926, is barred. (R.S. 4715) (Solicitor, August 22, 1934)

(3) A mother may not be paid a pension under the General Law as reenacted by section 30, Title III, Public No. 141, 73d Congress, and Public No. 269, 74th Congress, and pension as widow of a veteran of the Civil War. (R.S. 4715; A.D. 271)

(4) Death pension under Sec. 8.012 and disability pension under Sec. 8.011 or under the reenacted Act of June 2, 1930, may not be paid concurrently. (Solicitor, August 22, 1934, and May 7, 1938)

(5) Death pension to the remarried widow of a Spanish War Veteran under

the Act of May 1, 1926, and death compensation under Public No. 484, 73d Congress, as amended, to the widow of a World War Veteran, may not be paid concurrently. (A.D. 361)

(6) Death pension to a widow under Public No. 2, 73d Congress, and death pension to the remarried widow of a Spanish War veteran under the reenacted Act of May 1, 1926, are not payable concurrently. (A.D. 381). (December 29, 1939)

§ 2.2551 Under the provisions of Public No. 2, 73d Congress (Act of March 20, 1933) not more than one pension or award of compensation shall be payable to any one individual, except the receipt of pension or compensation by a widow, child, or parent on account of the death of any person shall not bar the payment of pension or compensation on account of the death of any other person. (Sec. 8.10, Paragraph XIII) but the increased amount of death compensation authorized by section 3, Public No. 304, 75th Congress (Act of August 16, 1937) or section 5, Public No. 198, 76th Congress (Act of July 19, 1939) may not be awarded concurrently with compensation or pension which may be payable under other laws because of the service and death of another person. This principle is for application when the beneficiary is receiving or is entitled to receive compensation or insurance on account of the service and death of one son and either compensation, pension or insurance on account of the service and death of another person. Accordingly, when the maximum amount of compensation payable under Sec. 8.011 on account of the service and death of more than one person exceeds the maximum provided on account of the death of one person by section 3, Public No. 304, 75th Congress, or by section 5, Public No. 198, 76th Congress, the awards will be continued under the regulation; provided that the payment of the increased rate of death compensation provided by section 3, Public No. 304, 75th Congress, or section 5, Public No. 198, 76th Congress, to a dependent parent, is not barred by the remarriage of that parent to a person who is also receiving compensation or pension as the dependent parent of a World War or peace time veteran. (A.D. 442)

(A) (1) For the purposes of Sec. 8.012, Paragraph I, as promulgated June 6, 1933, pension shall not be paid concurrently with active duty pay but may be paid concurrently with United States Employees Compensation.

(2) For the purposes of Sec. 8.012, paragraph I, as amended by Public No. 159, 75th Congress, (Act of June 23, 1937) and Public No. 732, 75th Congress, (Act of June 25, 1938) which relate to conditions of title of reserve officers and members of the enlisted reserves of the United States Army, Navy, or Marine Corps, pension shall not be paid concurrently with active duty pay or United States Employees Compensation.

(3) For the purposes of the General Law, the service pension laws, Sections

8.011, 8.012, (except as amended by Public No. 159, 75th Congress and Public No. 732, 75th Congress), and Sec. 8.013; Section 28, Public No. 141, 73d Congress, as amended; and Public No. 484, 73d Congress, as amended, the payment of United States Employees Compensation shall not operate as a bar to the payment of death pension or compensation. (Section 7, Act of September 7, 1916; Acting C. G. October 3, 1938)

(B) (1) Pension or compensation benefits under Public No. 2, 73d Congress, or Public No. 484, 73d Congress, shall not be paid concurrently to a claimant as widow of one veteran and as the remarried widow of another veteran. (A. D. 361 and 381)

(2) A widow may be paid additional compensation under provisions of Public No. 484, 73d Congress, as amended, on account of a stepchild of her deceased husband, during the period they are being paid death compensation under Sec. 8.011 because of the service connected death of her former husband who served in the World War. (Solicitor, August 12, 1938)

(3) A mother may be paid pension under Sec. 8.01 series but not under the reenacted laws on account of the service of a son in the Spanish-American War, concurrently with pension as widow of a Civil War Soldier. (A. D. 271)

(4) A widow may be paid pension based on the service of her husband in the Civil War and pension under a special act of the Congress or under the Sec. 8.01 series based on the service of a son who served in the Spanish-American War, the period of the latter service being covered by the Veterans Regulations. (Solicitor, August 16, 1934)

(5) Death pension under Sec. 8.013, is payable concurrently with death compensation based on service during the World War. (Solicitor, August 22, 1934; A. D. 271)

(C) As to circumstances under which both disability and death pension or compensation may be paid to the same person, see also Sec. 2.1296 to Sec. 2.1302, 2.2170, 2.2171, 2.2175, 2.2176 and 2.2177. (December 29, 1939.)

[SEAL] FRANK T. HINES,
Administrator.

[F. R. Doc. 40-4: Filed, December 29, 1939;
3:24 p. m.]

COMMENCEMENT OF ORIGINAL AWARDS OF DEATH PENSION OR COMPENSATION

§ 2.2568 *General law.* Original awards of death pension under the General Law (Sections 4702 and 4707, Revised Statutes, as amended), as to service prior to April 21, 1898, shall commence:

(A) *Widows.* The date following the date of the veteran's death, except that if payment is barred under the provisions of Section 4706, Revised Statutes, from the date that the youngest child

by the widow and the veteran shall have attained the age of sixteen years. (R.S. 4706, Act of June 7, 1888, 25 Stat. 173)

(B) *Remarried widows.* The date of filing formal application. (R.S. 4708, as amended by the Act of March 3, 1901 (31 Stat. 1445), and the Act of February 28, 1903 (32 Stat. 920))

(C) *Children.* (1) The day following the date of the veteran's death, if there be no widow or if the widow has died without payment of pension to her. (R.S. 4702, as amended)

(2) Date of remarriage of a pensioned widow, except when the widow has continued to receive pension after her remarriage and the child or children have resided with and been supported by her, their pension shall commence from the date of last payment to the widow. (R.S. 4702, as amended)

(3) The date following the date of the veteran's death, or from date of last payment to a pensioned widow if payment to the widow is barred under the provisions of Section 4706, Revised Statutes.

(4) The date of commencement of open and notorious adulterous cohabitation by a widow who has forfeited title under the Act of August 7, 1882 (22 Stat. 345), except that the date shall be from the date of last payment to the widow if payment of pension has been made to her since the commencement of such cohabitation.

(D) *Dependent mothers and fathers.* The date of filing formal application. (R.S. 4707 as amended by the Act of June 27, 1890, 26 Stat. 182)

(E) No award under the General Law for death resulting from service in the War with Spain, Boxer Rebellion, or Philippine Insurrection shall commence prior to March 28, 1934, under Section 30, Title III, Public No. 141, 73d Congress (Act of March 28, 1934), or prior to August 13, 1935, under Public No. 269, 74th Congress (Act of August 13, 1935).

(F) For the purposes of the General Law, as reenacted by the Act of March 28, 1934 (section 30, Title III, Public No. 141, 73d Congress) and the Act of August 13, 1935, (Public No. 269, 74th Congress) when claim was filed prior to August 5, 1939, the date of commencement shall be as prescribed in Sec. 2.2568 (A) to (E). When claim is filed on or after August 5, 1939, the date of commencement shall be as prescribed in Sec. 2.2572 (C). (December 29, 1939)

§ 2.2572 *Service acts, War with Spain, Boxer Rebellion, and Philippine Insurrection.* Original awards of death pension under the Service Acts relating to the War with Spain, Boxer Rebellion and Philippine Insurrection (Act of July 16, 1918, 40 Stat. 903; Act of September 1, 1922, 42 Stat. 834; and Act of May 1, 1926, 44 Stat. 382, as reenacted by Section 30, Title III, Public No. 141, 73d Congress, Act of March 28, 1934, and Public No. 269, 74th Congress, Act of August 13, 1935), shall commence:

Where claim was filed prior to August 5, 1939. (A) (1) *Widows.* The date of filing formal application:

(2) *Remarried widows.* (Under Public No. 269, 74th Congress only.) The date of filing formal application.

(B) *Children.* The date of filing formal application, except that, under the Act of May 1, 1926, in case of death or remarriage of a pensioned widow or forfeiture of her title to pension, their payments shall commence from the date of such death, remarriage or forfeiture. This exception shall be for application in any case wherein the widow is receiving, or has heretofore made or shall hereafter make application for, pension under the Act of May 1, 1926, and who thereafter elects or has heretofore elected to receive benefits in lieu thereof, under some other law.

Where claim was filed on or after August 5, 1939. (C) (1) For the purposes of Public No. 279, 76th Congress, (Act of August 5, 1939) when the veteran died prior to August 5, 1939, and claim is filed on or after that date, but within one year following the date of death of the veteran, the award shall be effective August 5, 1939, the date of enactment of the act. If application is not filed within one year from the date of death, the award shall be effective the date of filing the application.

(2) When the veteran died on or after August 5, 1939, and claim is filed within one year following the date of death, the award shall be effective the day following the date of death. If application is not filed within one year from the date of death, the award shall be effective the date of filing application.

(D) No award shall commence prior to March 28, 1934, under Section 30, Title III, Public No. 141, 73d Congress, or prior to August 13, 1935, under Public No. 269, 74th Congress. (December 29, 1939.)

§ 2.2573 *Public No. 2, 73d Congress and section 31, Public No. 141, 73d Congress—Spanish-American War, Philippine Insurrection, and Boxer Rebellion.* Original awards of death pension under Public No. 2, 73d Congress, (Act of March 20, 1933), and section 31, Public No. 141, 73d Congress, shall commence as follows:

For the purposes of Public No. 2, 73d Congress, and section 31, Title III, Public No. 141, 73d Congress, the effective date of an award of death pension based on service in the war with Spain, Boxer Rebellion, or Philippine Insurrection, shall be fixed in accordance with the facts found where claim was filed prior to August 5, 1939, except that no award of death pension shall be effective prior to the date of the veteran's death, date of the happening of the contingency upon which death pension is allowed, or the date of receipt of application therefor, whichever is the later date: Provided the benefits granted under section 31, Title III, Public No. 141, 73d Congress, shall not be awarded unless application is